

TENTATIVE RULINGS for CIVIL LAW and MOTION October 19, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: Abrahams v. Taser International, Inc. et al.
Case No. CV CV 09-333

Hearing Date: October 19, 2009 Department Fifteen 9:00 a.m.

Defendant Yolo Community Care Continuum's demurrer to Plaintiffs' First Amended Complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs fail to state facts sufficient to constitute a cause of action for negligence against defendant. (*Tarasoff v. Regents of the University of California* (1976) 17 Cal.3d 425.)

Defendant's unopposed motion to strike the punitive damages claim is **GRANTED**.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Coy v. R & S Architectural Products, Inc.
Case No. CV CV 08-2020

Hearing Date: October 19, 2009 Department Fifteen 9:00 a.m.

The motion for judgment on the pleadings as to the first cause of action is **DENIED**. (*Guz v. Bechtel Nat'l Inc.* (2000) 24 Cal.4th 317, 355.) The first amended complaint alleges sufficient facts showing other circumstances suggesting discriminatory animus. (First Amended Complaint ¶¶ 18-20.)

The unopposed motion by R & S Erection, Incorporated for judgment on the pleadings as to the fourth cause of action is **GRANTED WITHOUT LEAVE TO AMEND**.

R & S Erection, Incorporated's motion for judgment on the pleadings as to the fifth cause of action is **DENIED**. This cause of action is alleged against R & S Architectural Products, Inc. only. The motion for judgment on the pleadings as to the fifth cause of action based on the statute of frauds is **DENIED**. (*Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 671-675.)

R & S Architectural Products, Inc.'s motion for judgment on the pleadings as to the sixth cause of action is **GRANTED WITHOUT LEAVE TO AMEND**. (*Yurick v. Superior Court of Butte County* (1989) 209 Cal.App.3d 1116, 1120-1123; Govt. Code, § 12960, subd. (d).)

R & S Erection, Incorporated's motion for judgment on the pleadings as to the sixth cause of action based on allegation of an employer-employee relationship is **DENIED**. (First Amended Complaint ¶¶ 15-16, 36, 49-52 and 54.)

The motion for judgment on the pleadings as to the first and second causes of action and the claim for punitive damages based on failure to state the amount of damages is **DENIED**. (Code Civ. Proc., § 425.10 subd. (b); Civ. Code, § 3295, subd. (e).) The motion for judgment on the pleadings as to the fifth cause of action based on failure to state the amount of damages is also **DENIED**. (First Amended Complaint ¶¶ 11 and 16.) The motion for judgment on the pleadings as to the third and sixth causes of action based on failure to state the amount of damages is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 425.10, subd. (a).)

Plaintiff shall file a second amended complaint **by no later than November 2, 2009**.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: In re Shea Hendricks
Case No. CV PT 09-2027

Hearing Date: **October 19, 2009** **Department Fifteen** **9:00 a.m.**

The petitioner and the minor are directed to appear or to show good cause why the petitioner and minor should not be required to appear. (Cal. Rules of Court, rule 7.952.) If the petitioner and the minor choose to show good cause, they should do so by filing a declaration before the hearing setting forth the facts supporting good cause. If the parties fail to appear at the hearing and the Court has not excused their personal appearance, the petition will be denied without prejudice. No request for a hearing is required.

TENTATIVE RULING

Case: St. Paul Fire & Marine Ins. Co. v. NIC Ins. Co. et al.
Case No. CV CV 09-1450

Hearing Date: **October 19, 2009** **Department Fifteen** **9:00 a.m.**

The request for a stay is **DENIED**. The Court does not find that the Notice of Order Extending the Temporary Injunction Re: New York Supreme Court's Rehabilitation until December 21, 2009, is applicable to this action. (Ins. Code, § 1063.6 *et seq.*; *Hawthorne Savings F.S.B. v. Reliance Co. of Illinois* (2005) 421 F.3d 835, 855.) The Court finds that this case, which involves defense indemnification, and breach of contract damages pursuant to a written agreement between McCarthy Building Companies, Inc. and its subcontractors, is an *in*

personam action and not a collection action against INSCORP, and therefore, will neither directly, nor indirectly interfere with the INSCORP rehabilitation proceedings in New York.

Defendant Lawson Mechanical Contractors' demurrer is **CONTINUED** on the Court's own motion to Thursday, December 3, 2009, at 9:00 a.m. in Department Fifteen, to be heard with Plaintiff's motion to consolidate.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Wong v. Alberda**

Case No. CV CV 09-1243

Hearing Date: **October 19, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's attorneys, Vanessa Montague's and Montague & Viglione's motion to be relieved as counsel is **GRANTED**. (Cal. Rules of Court, rule 3.1362.) This order is not effective until Ms. Montague files a proof of service with the court showing service of a copy of the signed order on her client. (Cal. Rules of Court, rule 3.1362(e).)